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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,635	10/09/2003	James J. Fitzgibbon	79331	8444
22242	7590	09/19/2005	EXAMINER	
FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			BANGACHON, WILLIAM L	
			ART UNIT	PAPER NUMBER
			2635	

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/682,635

Applicant(s)

FITZGIBBON ET AL.

Examiner

William Bangachon

Art Unit

2635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/9/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Examiner's Response*

1. In response to the application filed 10/09/2003, the application has been examined. The Examiner has considered the presentation of claims in view of the disclosure and the present state of the prior art. It is the Examiner's position that **claims 1-42** are unpatentable for the reasons set forth in this Office action:

### *Drawings*

2. The drawings are objected to because the boxes (715, 717) in Figure 10 are missing labels. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the

Art Unit: 2635

changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. Claims 1, 14, 22 and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regards to claims 1 and 22, it is unclear and ambiguous on how the speech recognition module effect operation of the barrier operator to move between open and closed position, based on recognized spoken words. It is ambiguous how the transmitting unit and the speech activatable unit interact. Claims 1 and 22 provides for the use of **“a speech recognition module for remotely effecting operation of a barrier to move between open and closed position”**, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

With regards to claims 1, 14, 22, and 35, it is unclear and ambiguous in the claims on what type of signal is transmitted by the remote controller to effect the operation of the barrier operator to move between open and closed position. It is therefore unclear and ambiguous on what type of signal the base controller is to process to effect operation of the barrier operator (i.e. a passcode or a voice command or a combination of both).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 2635

7. Claims 1-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,161,005 {Pinzon} in view of USP 6,356,868 {Yuschik et al}.

In claims 1 and 22, a barrier operator system for moving a barrier between open and closed positions {col. 2, lines 60-65; col. 3, lines 47-53}, including:

an operator mechanism operably connected to a barrier for moving said barrier between open and closed positions {col. 4, lines 34-45};

a base controller (4) operably associated with said operator mechanism for causing said operator mechanism to move said barrier {col. 4, lines 45-59; col. 6, lines 18-31}; and

at least one remote controller (8, 9, 10, 11, 12) adapted for signal transmitting communication with said base controller, said at least one remote controller including a speech activatable unit comprising a speech recognition module to recognize one or more spoken words for effecting operation of said barrier to move between said open and closed positions {col. 5, lines 9-22; paragraph bridging cols. 5 and 6; col. 8, lines 29+}.

Said remote controller is also wall mounted {col. 6, lines 42-54; col. 7, lines 11-20; col. 8, lines 35-43}

Although Pinzon do not disclose expressly a programmable speech recognition module, these claim limitations would have been obvious in the voice decoder of Pinzon to one of ordinary skill in the art. As evidenced by Yuschik et al, which is in the same field of endeavor (access control based on voiceprint identification {Yuschik, col. 1, lines 6-8}), voiceprint systems (voice decoder of Pinzon) must be trained to recognize and

Art Unit: 2635

differentiate each authorized person, which involves sampling the person's voice and storing it as a template for comparison (programmable) {Yuschik, col. 1, lines 51+}. Some prior art voiceprint identification systems assign a unique spoken passcode to each user (programmable) {Yuschik, col. 2, lines 56+}. Yuschik teaches that it is advantageous to use a voiceprint system over PIN number system for gaining access, because it is quicker and more convenient instead of having to punch codes, and more secure because a person's voice is unique and cannot be stolen {Yuschik, col. 1, lines 28-50}. Clearly, these features are advantageous in the voiceprint system of Pinzon. Therefore, it would have been obvious to one of ordinary skill in the art to have a programmable voice recognition system in the system of Pinzon because it is quicker, more convenient, and more secure, as evidenced by Yuschik.

In claims 2 and 23, a radio frequency (RF) transmitter (42 or 66, 78) operably connected to said speech recognition module for transmitting a radio frequency signal to said base controller in response to a signal from said speech recognition module {Pinzon, col. 6, lines 19-30; col. 8, lines 15-24}.

In claims 3 and 24, a microcontroller (44 or 60) operably connected to said RF transmitter and to said speech recognition module and operable to transmit a signal to said RF transmitter on receipt of a signal from said speech recognition module {Pinzon, col. 7, lines 21+}.

In claims 4, 15, 25, and 36, said microcontroller is operable to provide a rolling code signal for transmission by said RF transmitter {Pinzon, col. 5, lines 39-53}.

In claims 5, 13, 16, 21, 26, 34, 37, and 42, said at least one remote controller includes a multi-digit keypad operably connected to a microcontroller and operable to provide a signal to said microcontroller to command operation of said RF transmitter {Pinzon, col. 7, lines 54+}.

In claims 6 and 27, said at least one remote controller is hardwired to said base controller {Pinzon, col. 6, lines 42+}.

In claims 7 and 28, said at least one remote controller includes a radio frequency (RF) transmitter operably connected to a microcontroller for transmitting signals to said base controller as shown in figures 3 and 4 of Pinzon.

Claims 8, 17, 29, and 38, recites the limitations of claim 11. Pinzon do not disclose effecting at least one of controlling lighting within or adjacent to an enclosure closed by said barrier and controlling opening and closing of said barrier.

And in claims 9 and 30, Pinzon do not disclose a barrier comprising an upward acting garage door. However, these claim limitations would have been a matter of obvious design choice in the system of Pinzon, to one of ordinary skill in the art. Pinzon teaches of a garage door. Most garage doors installed in homes have an upward acting



Art Unit: 2635

door and have lighting whenever opened. Obviously, these types of garage doors when equipped with the system of Pinzon read on the claims.

In claims 10, 18, 31, and 39, Pinzon does not disclose expressly a speech recognition module operable to respond to voice commands in a speaker dependent mode. Yuschik teaches that speaker dependent technology is the second type of speech recognition technology {Yuschik, col. 2, lines 32+}. Obviously, the voiceprint technology of Pinzon is operable in a speaker dependent mode because it requires training of each word by each individual user for authentication {Pinzon, col. 8, lines 30+}, and has higher accuracy for the user, as evidenced by Yuschik.

In claims 11, 19, 32, and 40, obviously, the speech recognition module of Pinzon, in place of DTMF tones, includes a microphone for receiving a spoken password (gateway word or command word) for causing said at least one remote controller to effect transmission of a signal to said base controller {Pinzon, col. 8, lines 29+}.

In claims 12, 20, and 41, said at least one remote controller includes a manually actuatable switch for effecting operation of said barrier to move between open and closed positions {Pinzon, col. 7, lines 54+}.

***Office Contact Information***

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to William Bangachon whose telephone number is **(571)-272-3065**. The Examiner can normally be reached on 4/4/10.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Michael Horabik can be reached on **(571)-272-3068**. The fax phone numbers for the organization where this application or proceeding is assigned is **571-273-8300** for regular and After Final formal communications. The Examiner's fax number is **(571)-273-3065** for informal communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.



William L Bangachon  
Examiner  
Art Unit 2635

September 13, 2005

MICHAEL HORABIK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

